NAIC National Association of Insurance Commissioners

Surplus Lines Implementation (EX) Task Force
Wednesday, December 1, 2010
3:30pm – 5:00pm (CST)

ROLL CALL

James J. Donelon, Chair	Louisiana	Brett J. Barratt	Nevada
Linda S. Hall	Alaska	James J. Wrynn	New York
Karen Weldin Stewart	Delaware	Robert L. Pratter	Pennsylvania
Kevin M. McCarty	Florida	Merle Scheiber	South Dakota
Michael T. McRaith	Illinois	Mike Geeslin	Texas
Stephen W. Robertson	Indiana	Alfred W. Gross	Virginia

AGENDA

1. Receive interested party comments on Nonadmitted Insurance Multi-State Agreement

    - American Bankers Insurance Association
    - Council of Insurance Agents and Brokers
    - National Association of Professional Surplus Lines Offices
    - Any other interested parties

2. Receive Delaware proposal for NRRA implementation

3. Consider adoption of Nonadmitted Insurance Multi-State Agreement

4. Any other matters brought before the Task Force

AMERICAN BANKERS INSURANCE ASSOCIATION
An affiliate of the AMERICAN BANKERS ASSOCIATION

1120 Connecticut Avenue, NW
Washington, DC 20036

202-663-5163
Fax: 202-828-4546
www.theabia.com

J. Kevin A. McKechnie
Executive Director
kmckechn@aba.com

November 17, 2010

Commissioner James J. Donelon
Chair, Surplus Lines Implementation (EX) Task Force
c/o Mr. John Bauer
National Association of Insurance Commissioners
2301 McGee Street, Suite 800
Kansas City, MO 64108-2662

Via e-mail to John Bauer: jbauer@naic.org

Re: Nonadmitted Insurance Multi-State Agreement

Dear Commissioner Donelon:

The American Bankers Insurance Association (ABIA)[1] would like to express our concern and disappointment that the Task Force has chosen to address only the collection and allocation of premium taxes in implementing the reform provisions of the Nonadmitted and Reinsurance and Reform Act of 2010 (NRRA). I am aware that you and the Task Force members have heard this concern expressed from other industry trade associations. ABIA supported the NRRA with the expectation that it would cause the states to address the lack of uniformity in the surplus lines regulatory system; so, our association is very disappointed that the Task Force, in pursuing a multi-state agreement approach, has failed to achieve uniform requirements, forms, and procedures for surplus lines insurance

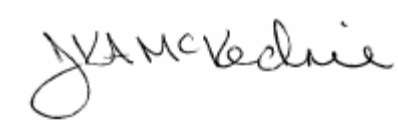
[1] The American Bankers Insurance Association (ABIA) is the insurance affiliate of the American Bankers Association. The ABIA's mission is to develop policy and provide advocacy for banks in insurance and to support bank insurance operations through research, education, compliance-assistance, and peer-group networking opportunities.Members of the ABIA include banking institutions of all asset sizes, insurance companies, service providers, consultants, mortgage companies, credit card companies, and associations. The membership makeup is approximately 55% banking institutions and 45% all other providers.

regulation. Conflicting state laws remain, and how they will be dealt with through the multistate agreement is still unclear. The multistate agreement simply perpetuates the existing dysfunctional system for regulating surplus lines insurance that the NRRA was designed to correct.

Members of the National Association of Insurance Legislators (NCOIL) have indicated a preference for the adoption of an interstate compact worked on by industry and certain insurance regulators called SLIMPACT. ABIA supports the compact approach because it is the only practical way to achieve uniformity and to provide a consistent regulatory structure in an otherwise dysfunctional system. While some members of the Task Force have indicated that the multistate agreement is just a first step, and additional steps toward achieving uniformity may be taken in the future, the states' track record of doing more than the minimum to comply with federal laws intended to achieve uniformity is poor. It seems to us that the NAIC's approach to complying with the NRRA is another opportunity foregone.

We urge the Task Force and the NAIC to take a broader view and support an approach that will provide uniformity in regulating surplus lines insurance in addition to enabling states to continue to collect their premium taxes.

Sincerely,



Kevin McKechnie
Executive Director

THE COUNCIL
of INSURANCE
AGENTS & BROKERS

November 30, 2010

The Honorable James J. Donelon
Chair
Surplus Lines Implementation Task Force
National Association of Insurance Commissioners
2301 McGee St, Suite 800
Kansas City, MO 64108-2604

Dear Commissioner Donelon,

The Council of Insurance Agents and Brokers appreciates the opportunity to provide comments on the 11/24 draft of the Nonadmitted Insurance Multi-state Agreement (NIMA). While The Council would still prefer that the states address the implementation of the surplus lines provisions of the Nonadmitted and Reinsurance Reform Act (NRRA) in a more comprehensive manner, such as an interstate compact, we offer these comments for improvements in the current draft.

As a general matter, we would urge the Task Force to track with the provisions of the NRRA as closely as possible. This matter takes on particular importance as the Task Force has developed a definition of "Home State" that is much expanded from the definition found in the NRRA. It is likely that not all of the states will choose to join the NIMA agreement. This means that some states will refer to the definition of "Home State" found in the NRRA, while others adhere to the definition found in the NIMA proposal. This will present a problem for our members, who will likely get caught up in disputes between NIMA and non-NIMA states over which state is the "Home State" for the insured's taxation purposes. By promulgating a definition that varies from what is contained in the NRRA, the NAIC will move away from the law's goals of simplification and streamlining.

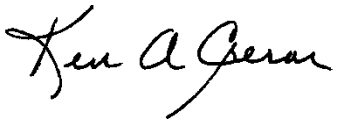
We would also like to again express our strong opposition to the inclusion of "Group Insurance" included within the larger definition of "Home State." We are very concerned about the administrative burden on surplus lines brokers, and particularly wholesale brokers, that will result from this definition. A group insurance policy may have hundreds or even thousands of certificate holders or members, the majority of whom pay for all or part of the insurance coverage themselves. If the "Home State" for tax purposes is determined by these individual group members, the surplus lines broker would be forced to break out tax payments for each of these policies – an exercise which will quickly generate a huge administrative burden in terms of record-keeping and reporting. This administrative burden would also flow to the states, who would have to process these additional payments. Finally, it is not clear that wholesale brokers have access to this information, yet they would be the parties responsible for tax payment and information reporting. We strongly urge the Task Force to delete this definition from the latest draft.

The Council also believes that states who ratify the NIMA agreement should be required to use the Clearinghouse for all reporting of surplus lines taxes and related information, including single-state policies and including those states who have stamping offices. It is not uncommon for a single-state policy to add additional locations in other states, and reporting the initial single-state transaction in the Clearinghouse would eliminate the need for duplicative and redundant data entry and reporting. Similarly, permitting states with stamping offices to opt out of reporting through the Clearinghouse will create a duplicative and redundant reporting system. Again, the goals of the Nonadmitted and Reinsurance Reform Act were to simplify and streamline surplus lines tax reporting, and allowing variances from the reporting scheme does not promote these goals.

701 Pennsylvania Ave NW Suite 750 Washington DC 20004-2608 T: 202 .783.4400 F: 202.783.4410 W: www.ciab.com

Finally, The Council believes that the data reporting requirements in Exhibit I will require unnecessary re-keying of data that regulators should already have. For example, as currently drafted, the exhibit would require the reporting of agency data and agent data. The states should be able to get this data directly from the NAIC's Producer Database by using the broker's National Producer Number, so the broker should not be required to key this information into the system.

Thank you for your consideration and for providing us with the opportunity to share our views on this subject. Please feel free to contact Nicole Allen at Nicole.allen@ciab.com with any questions.
Sincerely,



Ken A. Crerar
President

National Association of Professional Surplus Lines Offices, Ltd.
200 N.E. 54th Street • Suite 200 • Kansas City, MO 64118 • 816/741-3910 • Fax 816/741-5409
www.napslo.org

Richard M. Bouhan
Executive Director

November 30, 2010

The Honorable James J. Donelon
Chair
Surplus Lines Implementation Task Force
National Association of Insurance Commissioners
2301 McGee St, Suite 800
Kansas City, MO 64108-2604

Dear Commissioner Donelon:

NAPSLO would like to thank you and the task force for the opportunity to comment on the Nonadmitted Insurance Multi State Agreement. NAPSLO continues to supports a solution that in our view would achieve greater efficiencies, such as SLIMPACT, but would like to comment on the NIMA proposal.

CASUALTY ALLOCATION

We also remain concerned that the allocation schedule makes the system more onerous for insureds, insurers, retailers and brokers. The allocation schedule attached to the Nov. 24 version of NIMA requires more burdensome reporting than any previous version. The onerous reporting requirements threaten the efficiencies that the industry fought so hard to gain with the NRRA. We would urge you to consider a system that would require casualty premium to be reported to the home state of the insured.

The "as is" system of allocating multi-state casualty varies from state to state, broker to broker, insurer to insurer and from the admitted side to the nonadmitted side. Many surplus lines brokers do not presently allocate multi-state casualty premium for a number of reasons. Others allocate casualty only in situations where the policy is rated based on state-specific rating data that is already possessed by the broker. The insurers are not instructed to allocate casualty premium in the schedule T instructions so the insurer's annual statements frequently will not match the broker reporting for multi-state casualty policies.

The reasons surplus lines brokers do not currently allocate multi-state casualty premium include the fact that they could reasonably conclude that the location of liability exposure is where the headquarters of the insured reside. In, addition, in the vast majority of states there is no law that would require multi-state casualty premium to be allocated. Another obstacle is that many multi-state surplus lines casualty policies are not rated based upon individual state rating factors. Moreover surplus lines insurance is, by definition, non-standard so the rating methods are not uniform.

The NIMA proposal will increase the data reporting burden for the insureds, the retailers, and the wholesale brokers. It would routinely require gathering data that was not created in the normal course of business. We would strongly oppose any system that requires the creation of data and the reporting of data for the sole purpose of remitting taxes. We would urge the task force to implement a more efficient system that more closely matches the needs of the industry.

NON-HOME STATE TAX COLLECTION SYSTEM CONTRAVENES THE NRRA

We remain concerned that the NIMA approach is contrary to the NRRA in that a state other than the home state is requiring collection of its taxes, fees and assessments. We do not believe that the NRRA intended for the home state to contract with the other states to collect the taxes, fees and assessments on

risk exposures in the other states. The NRRA contains an "enforcement provision" in Section 522(c) which provides as follows:

> . . . any law, regulation, provision, or action of any state that applies or purports to apply to nonadmitted insurance sold to, solicited by, or negotiated with an insured whose home state is another state shall be preempted with respect to such application."

In our view NIMA contains a "provision" (or "action") that would "apply to non admitted insurance sold to . . . an insured whose home state is another state." We believe the NIMA contract contains language contractually requiring the home state to collect a tax payment (and fees and assessments) for the non-home state on non admitted insurance sold to an insured whose home state is another state. NIMA contains a "provision" whereby the non-home state requires the collection of taxes "on the portion of premium allocated to that state based upon the applicable allocation formula." Section 13 of NIMA appears to be a "provision that applies . . . to nonadmitted insurance sold to . . . an insured whose home state is another state." At the very least, the NIMA system requires "action" by non-home states that would apply to an insured whose home state is another state, in contravention of the NRRA.

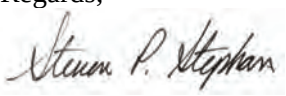
We do not believe that the NRRA intended for the home state to simply enter into a contract to collect all of the various taxes and fees for the other states. The NIMA system is reinstalling many of the features of the old system that was to be reformed by the NRRA. The NRRA will achieve improvements in terms uniform payment dates, payments to a single state, and compliance with a single state, but the NRRA improvements could be undone by a burdensome reporting system. We believe the NRRA intended something more efficient than implementing a slightly different mechanism to implement a similar tax system.

The NRRA envisioned an allocation system, but it would appear to prohibit the allocation system being proposed in NIMA. An alternative allocation system could most likely be devised that would avoid contravening the NRRA. One obvious example is to allocate taxes based upon the home state tax rate. There may be other ways to allocate the taxes to the states, but we believe the system must be consistent with the NRRA and not impose an undue burden on brokers, insureds, and insurers.

We would urge the Task Force to abandon the burdensome allocation formulas for multi-state casualty premium and to devise a simpler allocation mechanism that is consistent with all of the provisions of the NRRA.

Thank you for the opportunity to comment.

Regards,



Steven P. Stephan
NAPSLO Director of Government Relations

TO: **Surplus Lines Implementation (EX) Task Force**
FROM: **Ann Fletcher, DELAWARE**
DATE: **November 19, 2010**
RE: **Nonadmitted Insurance Regulatory Reform Agreement**

11/30/10 UPDATE: The attached version has been updated to include comparison to SLIMPACT-Lite as presented by NCOIL on November 19, 2010.

Delaware presents the attached "merged" version of the Agreement for consideration by the Group. Note: It is presented in Word format so changes can be made (please use "Track Changes" function) for further consideration.

Delaware is still of the opinion that SLIMPACT exceeded the provisions of NRRA and took too much of the states' authority upon itself. On the other hand, Delaware did not consider that SLIMA was comprehensive enough and we are of the same opinion regarding NIMA. SLIMPACT is at one end of the spectrum and SLIMA/NIMA is at the other. We need to get the Agreement to the mid-point, and we think this Agreement does that.

As we see it, the goal of this Surplus Lines Implementation (EX) Task Force is to come up with an all-encompassing Compact/Agreement that will fulfill all of the requirements of NRRA – most importantly premium tax allocation and regulatory uniformity – but will still satisfy the industry's desire for simplified, uniform, consistent, centralized, efficient (etc.) reporting requirements. It is also essential that ir be easy to introduce (hopefully with the industry's full support) to our state legislators with confidence in its passage.

The biggest differences between what I called the NIRRA and the earlier NIMA are as follows:

1. Establishes the Nonadmitted Insurance Regulatory Reform Association (instead of "Commission") to take care of administrative functions.
2. All Participating States belong to the Association and are entitled to one vote, although they may appoint more than one member. (Regardless whether the state's legislature passes enacting or enabling legislation, all participating states are bound to the Agreement and are eligible to vote.)
3. Adds provisions for establishing Uniform Standards
4. Makes the definition of Allocation Formula and the application of the Annexes more flexible
5. Allows the Association to make Rules (binding) or Resolutions (not binding), as well as Uniform Standards, but only with approval from 2/3 of participating states.
6. Takes out most of the administrative sections of SLIMPACT and moves them to the Bylaws. For example, the details of the Management Committee, etc. and Rulemaking Authority.
7. It is not necessary for every state to contract with the Clearinghouse. That authority is given to the Association on behalf of the participating states. (Added provision for a Procurement Committee to secure vendor services.)
8. Slight Effective date change to allow all states time to make legislative changes and join. This is to avoid having a couple of states join right away and set the bylaws, rules, etc. without participation from other states because they didn't get a chance to join in time.

Contact: ann.fletcher@state.de.us

DELAWARE Proposal, including parts from Comments, NIMA and SLIMPACT-Lite

Important:
Words in blue font are my additions added from either previous versions or Comments.
For the most part, changes are marked in red or ~~strikethrough~~.
Words in *italics* were copied from NIMA.
Words in pink font were added from SLIMPACT-Lite as submitted by NCOIL
Words in green font are SLIMPACT-Lite quotes from NIRRA (DE 11/17/10 proposal) wording
NOTE: I changed the name of the Agreement and the Commission to avoid confusion

2010 NONADMITTED INSURANCE REGULATORY REFORM AGREEMENT

Preamble

DRAFTING NOTE – AF: This Preamble is meant to summarize all of what is required in the NRRA plus some of the sentiments expressed in the original SLIMPACT. It is intended to be a part of enacting legislation, that is to say, wordy but not absolutely necessary.

WHEREAS, with regard to Nonadmitted Insurance, the 111th United States Congress, has stipulated in Subtitle V, the Nonadmitted and Reinsurance Reform Act of 2010, of the Dodd-Frank Wall Street Reform and Consumer Protection Act, hereafter, the NRRA, that:

(A) The placement of Nonadmitted Insurance shall be subject to the statutory and regulatory requirements solely of the insured's home State, and

(B) Any law, regulation, provision, or action of any State that applies or purports to apply to Nonadmitted Insurance sold to, solicited by, or negotiated with an insured whose home State is another State shall be preempted with respect to such application; except that any State law, rule, or regulation that restricts the placement of workers' compensation insurance or excess insurance for self-funded workers' compensation plans with a nonadmitted insurer shall not be preempted.

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WHEREAS, in compliance with NRRA, no State other than the home State of an insured may require any premium tax payment for Nonadmitted Insurance; and no State other than an insured's home State may require a surplus lines broker to be licensed in order to sell, solicit, or negotiate Nonadmitted Insurance with respect to such insured;

WHEREAS, the NRRA intends that the States may enter into a compact or otherwise establish procedures to allocate among the States the premium taxes paid to an insured's home State; and that each State adopt nationwide uniform requirements, forms, and procedures, such as an interstate compact, that provide for the reporting, payment, collection, and allocation of premium taxes for Nonadmitted Insurance;

WHEREAS, after the expiration of the two-year period beginning on the date of the enactment of the NRRA, a State may not collect any fees relating to licensing of an individual or entity as a surplus lines broker in the State unless the State has in effect at such time laws or regulations that provide for participation by the State in the national insurance producer database of the NAIC, or any other equivalent uniform national database, for the licensure of surplus lines brokers and the renewal of such licenses;

WHEREAS, a need exists for a system of regulation that will provide for surplus lines insurance to be placed with reputable and financially sound nonadmitted insurers, and that will permit orderly access to surplus lines insurance in this state and encourage admitted insurers to make new and innovative types of insurance available to consumers in this state;

WHEREAS, protecting the revenue of this state and other Participating states may be accomplished by facilitating the payment and collection of premium tax on Nonadmitted Insurance and providing for allocation of premium tax for Nonadmitted Insurance of Multi-State Risks among the States in accordance with uniform allocation formulas;

WHEREAS, the efficiency of the surplus lines market may be improved by eliminating duplicative and inconsistent tax and regulatory requirements among the States, and by promoting and protecting the interests of surplus lines licensees who assist such insureds and nonadmitted insurers, thereby ensuring the continued availability of Nonadmitted Insurance to consumers;

WHEREAS, regulatory compliance with respect to Nonadmitted Insurance placements may be streamlined by providing for exclusive single-state regulatory compliance for Nonadmitted Insurance of Multi-State Risks, thereby providing certainty regarding such compliance to all persons who have an interest in such transactions, including but not limited to insureds, regulators, surplus lines licensees, other insurance producers, and surplus lines insurers;

WHEREAS, coordination of regulatory resources and expertise between State insurance departments and other State agencies, as well as State surplus lines stamping offices, with respect to Nonadmitted Insurance will be improved;

DELAWARE Proposal, including parts from Comments, NIMA and SLIMPACT-Lite

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NOW, THEREFORE, in consideration of the foregoing, the State of _____ and the various other States do hereby solemnly covenant and agree, each with the other as follows:

DELAWARE Proposal, including parts from Comments, NIMA and SLIMPACT-Lite

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Article I Purposes

The purposes of this Agreement are, through means of joint and cooperative action among the Participating States:

1. *To facilitate the payment and allocation of premium tax on Nonadmitted Insurance for Multi-State Risks among the Participating States in accordance with ~~the~~ a uniform premium tax Allocation method and formula ~~contained in the Annexes to this agreement~~ and based on the tax rate established by each Participating state.*
2. *To provide for uniform requirements, forms and procedures that provide for the reporting, payment, collection and allocation of premium taxes for Nonadmitted Insurance of Multi-State Risks among the Participating States.*
3. *To provide for the establishment and operations of a Clearinghouse to facilitate the receipt and distribution of Premium Tax and transaction data related to Nonadmitted Insurance of Multi-State Risks.*
4. *To coordinate reporting of premium tax data and transaction data related to Nonadmitted Insurance of Multi-State Risks among Participating States.*
5. *To provide for requirements and procedures for the Participating States that choose to utilize the Clearinghouse for the reporting, payment and collection of premium taxes for Nonadmitted Insurance of Single-State Risks.*
6. To establish the Nonadmitted Insurance Regulatory Reform Association. (DE suggested name instead of "Commission")
7. To establish Uniform Standards; which may be adopted by Participating States to achieve uniformity in regulatory compliance requirements, given that Nonadmitted Insurance of Multi-State Risks shall be subject to the regulatory compliance requirements of the Home State exclusively in accordance with the NRRA.

DELAWARE Proposal, including parts from Comments, NIMA and SLIMPACT-Lite

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Article II Definitions

In this Agreement, unless otherwise specified, words and expressions used have the same meaning as in the Nonadmitted Reinsurance and Reform Act of 2010. For purposes of this Agreement, the following definitions shall apply:

1. *"Agreement" means this* Nonadmitted Insurance Regulatory Reform Agreement (NIRRA), (DE suggested name instead of "Compact" or "NIMA") *entered into by the Participating States pursuant to Section 521(b)(1) of the NRRA.*

2. *"Admitted Insurer" means, with respect to a State, an insurer that is licensed ~~or authorized~~ to transact the business of insurance in such State.*

DRAFTING NOTE – AF: The former definition for #2 might have taken care of the problem of a risk located in an "admitted" insurer's state. It bears further discussion. The former wording added: "provided that the insurer's domiciliary state, pursuant to a statute, regulation, or through some other method that has the force and effect of law, deems the insurer not to be licensed in such state for purposes of this Agreement."

3. "Affiliate" means, with respect to an insured, any entity that controls, is controlled by, or is under common control with the insured.

4. "Allocation Formula" means the uniform methods used to determine which insured risk exposures will be apportioned to each State for the purpose of calculating and allocating Premium Taxes due on Nonadmitted Insurance. See Annex "A" and Annex "B" to this Agreement, respectively.

DRAFTING NOTE – AF: This #4 definition was changed to make it more general and allow for more flexibility in amending the Allocation Tables if necessary.

5. "Association" means the "Nonadmitted Insurance Regulatory Reform Association" established by this Agreement.

6. "Bylaws" means those bylaws established by the Association for its governance, or for directing or controlling the Association's actions or conduct consistent with the purposes of this Agreement.

7. *"Clearinghouse" means the ~~mechanism established~~ entity authorized pursuant to this Agreement ~~for~~ to facilitate receipt and distribution of premium taxes and transaction data related to Nonadmitted Insurance of Multi-State Risks.*

8. "Clearinghouse Transaction Data" means the information regarding Nonadmitted Insurance of Multi-State Risks and Single-State Risks ~~required~~ to be reported, accepted, collected, and

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processed to the Clearinghouse by Surplus Lines Licensees ~~for Surplus Lines Insurance~~ and insureds who have independently procured insurance under this Agreement and Rules to be adopted by the Association.

9. "Commissioner" means the chief insurance regulatory official of a State including, but not limited to commissioner, superintendent, director or administrator or their designees.

10. "Home State"

(1) In General.—except as provided in subparagraph (B), the term ''Home State'' means, with respect to an insured—

(A) The State in which an insured maintains its principal place of business or, in the case of an individual, the individual's principal residence; or

(B) If 100 percent of the insured risk is located out of the State referred to in subparagraph (A), the State to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.

(2) "Principal place of business" means, with respect to determining the home State of the insured, the principal place of business is the State where (i) the insured maintains its headquarters and where the insured's high-level officers direct, control and coordinate the business activities; or (ii) if the insured's high-level officers direct, control and coordinate the business activities in more than one State, the State to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated; or (iii) if the insured's principal place of business is located outside ~~any State~~ the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, the Virgin Islands, or American Samoa , the State to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.

(3) "Principal residence" means, with respect to determining the home State of the individual, the State (i) where the individual resides for the greatest number of days during a calendar year; or (ii) if the insured's principal residence is located outside ~~any State~~ the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, the Virgin Islands, or American Samoa, the State to which the greatest percentage of the insured's taxable premium for that insurance contract is allocated.

DRAFTING NOTE – AF: I added the part about the United States, etc. so there wouldn't be any chance that "outside any State" could be confused to mean in another state.

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(4) Affiliated Groups.—If more than one insured from an affiliated group are named insureds on a single Nonadmitted Insurance contract, the term ''Home State'' means the Home State, as determined pursuant to subparagraph (A) of paragraph (1) of this subsection, of the member of the affiliated group that has the largest percentage of premium attributed to it under such insurance contract.

(5) Group Insurance. When the group policyholder pays 100% of the premium from its own funds, the term "home State" means the home State, as determined pursuant to subparagraph (A) of paragraph (1) of this subsection, of the group policyholder. When the group policyholder does not pay 100% of the premium from its own funds, the term "home State" means the home State, as determined pursuant to subparagraph (A) of paragraph (1) of this subsection, of the group member.

DRAFTING NOTE – AF: DE still believes that sections 2, 3 and 5 of this definition should be separate from the Home State definition rather than added to the NRRA definition. For example, the definition could add wording like "for the purpose of allocation of premium, Group Insurance shall be considered…"

11. *"Independently Procured Insurance" means insurance procured by an insured directly from a Nonadmitted Insurer as permitted by the laws of the Home State.*

12. "Insurer Eligibility Requirements" means the criteria, forms and procedures established to qualify as a Nonadmitted Insurer under the law of the Home State.

13. *"Licensed" means, with respect to an insurer, authorized to transact the business of insurance by a license, certificate of authority, charter, or otherwise according to the laws of a State.*

14. "Member" means the person or persons chosen by a Participating State as its representative or representatives to the Association provided that each Participating State shall be limited to one vote.

15. *"Multi-State Risk" means a risk covered by a Nonadmitted Insurer with insured exposures in more than one State.*

16. *"Non-Participating State" means any State that has not ~~adopted~~ executed this Agreement.*

17. *"Nonadmitted Insurance" means any property and casualty insurance permitted in a State to be placed directly or through a Surplus Lines Licensee with a Nonadmitted Insurer eligible to accept such insurance. For the purposes of this Agreement, Nonadmitted Insurance includes Surplus Lines Insurance and Independently Procured Insurance.*

18. *"Nonadmitted Insurer" means, with respect to a State, an insurer not licensed to engage in the business of insurance in such State, but shall not include a Risk Retention Group, as that*

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term is defined in section 2(a)(4) of the Liability Risk Retention Act of 1986 (15 U.S.C. § 3901(a)(4)).

19. *"Participating State" means any State that has executed this Agreement and that has not withdrawn or defaulted pursuant to Part IX.*

DRAFTING NOTE – AF: This #19 definition is sufficient, but I suggest the following: "means any State that has legislated enactment of this Agreement or any State that has not enacted this such legislation but has entered into a written contract with the Association by means of enabling legislation permitting participation, consistent with the purposes of this Compact, and that has not withdrawn or defaulted pursuant to Article IX."

20. "Policyholder Notice" means the disclosure notice or stamp that is required to be furnished to the applicant or policyholder in connection with a Surplus Lines placement.

21. "Premium Tax" means, with respect to Nonadmitted Insurance, any tax, fee, assessment, or other charge imposed by a government entity directly or indirectly based on any payment made as consideration for such insurance, including premium deposits, assessments, registration fees, and any other compensation given in consideration for a contract of insurance.

22. *"Property and Casualty Insurance" means any kind of insurance on property, fidelity and surety insurance, or liability insurance, but does not mean title insurance, workers' compensation insurance, or any insurance on the life of a person, including life insurance, annuities, accident and health insurance, or disability insurance.*

23. "Purchasing Group" means any group formed pursuant to the Liability Risk Retention Act which has as one of its purposes the purchase of liability insurance on a group basis, purchases such insurance only for its group members and only to cover their similar or related liability exposure and is composed of members whose businesses or activities are similar or related with respect to the liability to which members are exposed by virtue of any related, similar or common business, trade, product, services, premises or operations and is domiciled in any State.

24. "Resolution" means a non-binding written motion or formal statement of intent affirmatively voted upon by the Association.

25. "Rule" means a binding statement of general or particular applicability and future effect promulgated by the Association designed to implement, interpret, or prescribe ~~law or~~ policy or describing the organization, procedure or practice requirements of the Association which shall be mandatory for the Participating States.

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26. "Single-State Risk" means a risk covered by a Nonadmitted Insurer with insured exposures in only one State.

27. "State" means any State, Commonwealth or Republic of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa.

28. "Surplus Lines Insurance" means insurance procured by a Surplus Lines Licensee from a Surplus Lines Insurer or other Nonadmitted Insurer as permitted under the law of the Home State; for purposes of this Agreement "Surplus Lines Insurance" shall also mean excess lines insurance as may be defined by applicable State law.

29. "Surplus Lines Insurer" means a Nonadmitted Insurer permitted under the law of the Home State to accept business from a Surplus Lines Licensee.

30. "Surplus Lines Licensee" means an individual, firm or corporation that is licensed in a State to sell, solicit or negotiate insurance, including the agent of record on a Nonadmitted Insurance policy, on properties, risks or exposures located or to be performed in a State with Nonadmitted Insurers.

The following are the Annexes that are attached to, and that form an integral part of, this Agreement: ***Annex "A"*** *- Nonadmitted Insurance Premium Tax Allocation;* ***Annex "B"*** *– Allocation Formula;* ~~*and* ***Exhibit 1*** *Information to be Submitted by the Broker via the Clearinghouse Web Portal.*~~ *The Contents of these Annexes are subject to change pursuant to Article VIII (3).*

DRAFTING NOTE – AF: DE is of the strong opinion that the data elements that will be required by the Clearinghouse should not be included as an integral part of this Agreement. Those data elements should/will be determined when the Clearinghouse process specifications are developed.

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Article III Establishment of the Association and Venue

1. The Participating States hereby create and establish a joint public agency known as the "Nonadmitted Insurance Regulatory Reform Association."
2. Pursuant to Article IV, the Association shall have the ~~power~~ authority to adopt Rules and Resolutions regarding the reporting of Nonadmitted Insurance of Multi-State Risks and Single-State Risks, implementation of Allocation Formulas, establishment and operations of a Clearinghouse for receipt and disbursement of allocated Premium Tax and Clearinghouse Transaction Data, elements of Clearinghouse Transaction Data, and operational procedures for the purpose of establishing the means of financing, administering, operating and enforcing compliance with the provisions of this Agreement, its Bylaws and Rules as contemplated in this Agreement.
3. Pursuant to Article IV, the Association will have the authority to adopt Rules establishing foreign insurer eligibility requirements and a concise and objective policyholder notice regarding the nature of a surplus lines placement.
4. The Association is a body corporate and politic, and an instrumentality of the Participating States.
5. The Association is solely responsible for its liabilities unless otherwise specifically provided in this Agreement.
6. Venue is proper and judicial proceedings by or against the Association shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the Association is located. The Association may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings.

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Article IV Duties of the Association

The Association shall have the authority to perform the following duties and functions:

1. *To establish and utilize Bylaws, to be agreed upon by a majority of the Participating States, for governance of the operations of the Association, or for directing or controlling the Association's actions or conduct, consistent with the purposes of this Agreement.*
2. To promulgate Rules, pursuant to Article V of this Agreement and according to processes further specified in the Association's Bylaws, which shall be binding in the Participating States to the extent and in the manner provided in this Agreement;
3. To promulgate Resolutions, which shall not be mandatory or binding in the Participating States, but which shall be recommended for the purpose of fulfilling the intent of this Agreement, its Bylaws and Rules.
4. *To establish and provide for the administration of a Clearinghouse for the purpose of a single point for collection, allocation, audit, and distribution of Premium Tax revenue and Clearinghouse Transaction Data regarding Nonadmitted Insurance to the Participating States, and to ensure that the Clearinghouse and its computer software system(s) are capable of meeting the requirements of this Agreement.*
5. To provide for uniform tax audit procedures for the Clearinghouse with respect to the allocation of Premium Tax revenue including:
    a. Minimum audit standards, including sampling methods,
    b. Review of internal controls,
    c. Cooperation and sharing of audit responsibilities among Participating States,
    d. Handling of refunds or credits due to overpayments or improper allocation of Premium Taxes,
    e. Taxpayer records to be reviewed including a minimum retention period,
    f. Authorities of Participating States to review, challenge, or re-audit taxpayer records.
6. To enforce compliance by Participating States with Rules and Bylaws pursuant to the authority set forth in Article IX; and to provide for dispute resolution among Participating States;
7. *To establish methods and procedures by which Participating States may allow the payment of Premium Tax and reporting of Clearinghouse Transaction Data for Nonadmitted Insurance of Single-State Risks or non-property and casualty insurance, filed by Surplus*

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Lines Licensees and insureds who have independently procured insurance, directly to the Clearinghouse, provided, however, that this shall not be a mandatory Rule.

8. To make available advice and training to those personnel in State stamping offices, State insurance departments or other State departments for record keeping, tax compliance, and tax allocations; and to be a resource for State insurance departments and other State departments;

9. To appoint committees, including, but not limited to, an Executive committee, an Operations ~~Procedures~~ committee, an Audit committee, a Procurement committee, and certain Advisory committees comprised of Members, State insurance regulators, State legislators or their representatives, insurance industry and consumer representatives, and such other interested persons as may be permitted in keeping with the purposes of this Agreement;

10. To establish Uniform Standards with regard to regulatory compliance requirements for:

    a. Licensing of persons who sell, solicit, or negotiate insurance with Nonadmitted Insurers;

    b. Diligent search and exemptions, and Policyholder Notice regarding the nature of Nonadmitted Insurance placement;

    c. Independently Procured Nonadmitted Insurance;

    d. Nonadmitted Insurance for certain Commercial Purchasers;

    e. Participating State participation in a national producer database for producer licensing

    f. Other Uniform Standards with respect to Nonadmitted Insurance regulatory compliance requirements that in the opinion of the Association would result in regulatory and market efficiencies without a reduction in any consumer protection afforded insureds or claimants.

11. To establish and maintain offices;

12. To purchase and maintain insurance and bonds;

13. To borrow, accept or contract for services of personnel, including, but not limited to, employees of a Participating State or stamping office, pursuant to an open, transparent, objective competitive process and procedure adopted by the Association.

14. To hire employees, professionals or specialists, and elect or appoint officers, and to fix their compensation, define their duties and give them appropriate authority to carry out the purposes of the Agreement, and determine their qualifications, pursuant to an open, transparent, objective competitive process and procedure adopted by the Association; and to establish the Association's personnel policies and programs relating to confidentiality,

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conflicts of interest, rates of compensation and qualifications of personnel, and other related personnel matters;

15. To accept any and all appropriate donations and grants of money, equipment, supplies, materials and services, and to receive, utilize and dispose of the same; provided that the Association shall not accept, receive, utilize, or dispose of anything from any Surplus lines Licensee, Nonadmitted Insurer, or association of either, and the independence of the Association concerning the performance of its duties shall not be compromised;

16. To lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve or use, any property, real, personal or mixed; provided the Association shall not accept, receive, utilize, or dispose of anything from any Surplus lines Licensee, Nonadmitted Insurer, or association of either, and the independence of the Association concerning the performance of its duties shall not be compromised;

17. To sell convey, mortgage, pledge, lease, exchange, abandon or otherwise dispose of any property real, personal or mixed;

18. To establish a budget and make expenditures;

19. To borrow money, except that the Association shall not pledge the credit of any Participating State;

20. To bring and prosecute legal proceedings or actions in the name of the Association, provided that the standing of any State insurance department to sue or be sued under applicable law shall not be affected;

21. To provide and receive information from, and to cooperate with, law enforcement agencies;

22. To adopt and use a corporate seal; and

23. To perform such other functions as may be necessary or appropriate to achieve the purposes of this Agreement consistent with the State regulation of the business of insurance.

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Article V Authority to Establish Mandatory Rules

The Association shall adopt mandatory Rules that establish:

1. Uniform Allocation Formulas for each type of Nonadmitted Insurance coverage, which Allocation Formulas must be implemented and used by each Participating State for *allocation of Nonadmitted Insurance premium taxes among the applicable Participating states.*

2. *Uniform methods and procedures by which Participating States will require Surplus Lines Licensees and insureds who have independently procured insurance to pay Premium Tax and report Clearinghouse Transaction Data directly to the Clearinghouse for all Nonadmitted Insurance of Multi-State Risks for which that state is the Home State, except that the Association shall not promulgate any Rule which shall require a State to treat any property and casualty insurance as Nonadmitted Insurance where the laws of the State do not provide such treatment.*

3. *Uniform Clearinghouse Transaction Data reporting forms, requirements and procedures for all information reported to the Clearinghouse, which each Participating State shall require all Surplus Lines Licensees and insureds who have independently procured insurance to use.*

4. *The method and procedures for the Clearinghouse to report to all Participating States all outstanding Premium Taxes owed to any of the Participating States, the dates upon which payment of such Premium Taxes are due and a method of payment through the Clearinghouse.*

5. *A reasonable fee that shall be collected by the Clearinghouse and payable by the insureds who have independently procured insurance directly or through a surplus lines licensee on each transaction processed through the Clearinghouse to cover the cost of the operations of the Clearinghouse and the activities of the Association and its staff in a total amount sufficient to cover the Association's annual budget. If the Home State has a stamping office, this fee shall be in addition to the service fee that is received by stamping offices.*

Drafting Note – AF: The way #5 is grammatically structured, the fee is paid by the insured – either when they procure coverage directly or through a SL licensee. **Is that correct?**

~~6.~~ *That no Participating State, other than the Home State may require a Surplus Lines licensee to submit documentation to a stamping office of that State, ~~and a Home State with a stamping office may require the initial submission of transaction data, premium taxes, and fees with the stamping office of that State provided the State agrees by contract with the Clearinghouse to forward relevant transaction data, premium taxes, and fees to the Clearinghouse for distribution to other Participating States.~~*

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Drafting Note – AF: We disagree with the second part of #6. Our position is that if a state still wants to use its stamping office, it should nevertheless require taxes, etc. to be sent directly to the Clearinghouse and have the licensee send other pertinent documentation to the stamping office separately. The sole purpose of the Clearinghouse is collection and allocation of taxes, and to achieve uniformity, it should be the sole filing location. The stamping office can easily get tax and transaction data from the Clearinghouse. The portion of #6 with strikethrough should be deleted and replaced with something like: "but a Home State with a stamping office may require a Surplus Lines licensee to make a separate submission to the stamping office in accordance with that State's Surplus Lines law, in addition to the submission made to the Clearinghouse."

7. Uniform minimum foreign insurer eligibility standards for Nonadmitted Insurers in keeping with such requirements and criteria as set forth in Section 524 of the NRRA, which shall be implemented and used by each Participating State.
8. Uniform treatment of Purchasing Group Surplus Lines Insurance placements.
9. *That each Participating State shall enforce, if necessary, collection of unpaid tax and interest due and will follow the methods of collection governed by the laws of the Home State and any administrative procedures of this Agreement.*
10. *That each Participating State shall establish one tax rate, encompassing any applicable tax rates and fees, that applies to Nonadmitted Insurance; provided, however, that nothing shall require a State to impose a tax on any kind of insurance for which the State presently does not have an obligation to tax; or has allowed an exemption, and further provided that, where a State utilizes a surplus lines stamping office, the stamping office may, in accordance with the laws of that State, impose stamping fees in addition to the tax.*
11. *That each Participating State shall require the payment of taxes and fees when the Participating State is the Home State: (a) at the rate of taxation and fees determined by the Home State on the portion of the premium allocated to the Home State based on the applicable Allocation Formula; and (b) at the rate of taxation and fees specified by each Participating State on the portion of the premium allocated to that State based on the applicable Allocation Formula; and (c) at the rate of taxation and fees determined by the Home State on any portion of the premium not allocated under subparagraphs (a) and (b).*
12. *That for those policies of Nonadmitted Insurance where transaction data consistent with Exhibit 1 is submitted prior to the payment of Nonadmitted Insurance premium taxes, the accounting of taxes due will be tracked by the computer software management system managed by the Clearinghouse, and the issuance of an invoice and its payment will be handled by the Clearinghouse.*

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Drafting Note – AF: I took out the part that requires reporting according to the Annexes and where the Clearinghouse allocates the taxes to Participating states. That information would be contained in the "Rule" as the Clearinghouse specifications are established.

13. That each Surplus Line Licensee is required to be licensed only in the Home State of each insured for whom Surplus Lines Insurance has been procured.

14. That each Participating State shall not require Surplus Lines Licensees or those who procure any other form of Nonadmitted Insurance to:

    a. Use different tax rates for different classes or types of insurance coverage; or

    b. Calculate and pay or account for fire district charges, surcharges or assessments except to the extent that such charges are either incorporated into such Participating State's single tax rate or can be calculated simultaneously with the tax rate at the inception of the policy; or

    c. Report tax information to any person, entity, governmental entity or political subdivision except to a State agency or designee of a State agency.

Drafting Note – AF: We could probably delete #12 since we have #9 and #10.

15. *That each Participating State shall give notice to the Association of any changes to its statewide Nonadmitted Insurance premium tax rate and any statewide assessments at least 90 days prior to the effective date of such changes, and the Association will send advance notice of ~~any~~ such changes to all of the Participating States via electronic mail to the designated contact of each Participating State.*

16. *That each Participating State shall require that Premium Tax filings and payments be submitted to the Clearinghouse on a quarterly basis utilizing the following dates only: February 15 for the quarter ending the preceding December 31, May 15 for the quarter ending the preceding March 31, August 15 for the quarter ending the preceding June 30, and November 15 for the quarter ending the preceding September 30.*

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Article VI Organization of the Association

1. Membership, Voting and Bylaws

    a. Each Participating State shall appoint at least one Member to participate in the governance of the Association in accordance with the Bylaws. Each state shall determine the qualifications and the method by which it selects its Member(s), and each Member shall be qualified to serve in that capacity pursuant to applicable law of the Participating State. Any Member may be removed or suspended from office as provided by the law of the State from which he or she shall be appointed. Any vacancy occurring in the Association shall be filled in accordance with the laws of the Participating State wherein the vacancy exists.

    b. Each Participating State shall be entitled to one vote and shall designate one Member who is authorized to vote on behalf of that Participating State. Notwithstanding any provision herein to the contrary, no action of the Association with respect to the promulgation of a Rule, Resolution or Uniform Standard shall be effective unless two-thirds (2/3) of the voting Members vote in favor thereof.

    c. The Association shall, by a majority of the voting Members, prescribe Bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes, and exercise the powers, of the Agreement.

    d. The Association shall publish its Bylaws in a convenient form and file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the Participating States.

DRAFTING NOTE – AF: The changes in (a) and (b) allow any State to have more than one Member while still only having one "voting Member". For example, States like TX that need a representative from DOI and Controllers office and maybe the stamping office would be able to have 2 or 3 members but still only 1 vote. Any state with more than one member should be able to reach a consensus among their members and direct their designated voting member to cast their one vote appropriately.

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Article VII Dispute Resolution

1. *As prescribed in the Bylaws, best efforts will be exercised by the Participating States to reach consensus in respect to disputed issues arising on matters governed by this Agreement.*

2. *If a dispute arises out of or relates to this Agreement, or the breach thereof, and if the dispute cannot be settled through negotiation, the affected Participating States agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures before resorting to arbitration, litigation, or some other dispute resolution procedure.*

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Article VIII Participating States, Effective Date and Amendments

1. *Any State is eligible to become a Participating State.*

2. *The Agreement shall become effective and binding as of the first day after the conclusion of the calendar quarter in which the Agreement is executed either through legislative enactment into law or legislatively enabled contract participation in the Agreement by two (2) Participating States*, provided, however, that the Association shall become effective for purposes of adopting Bylaws, Rules, Resolutions or Uniform Standards and creating the Clearinghouse when there are a total of seven (7) Participating States ~~or, alternatively, when there are Participating States representing greater than twenty-five percent (25%) of the Nonadmitted Insurance premium volume based on records of the percentage of Nonadmitted Insurance premium set forth in the records of the NAIC for the prior year.~~ *Thereafter, it shall become effective and binding as to any other Participating State as of the first day after the conclusion of the calendar quarter in which the State executes the Agreement into law or contracts participation in the Agreement.*

DRAFTING NOTE – AF: DE is concerned that a couple of states could "join" the Association immediately and set all the Rules and Bylaws, etc., before other states could join and have a voice. To give all states a chance to pass whatever legislation they need to join and participate, we think this Paragraph should begin with something like: "The Agreement shall become effective and binding after July 21, 2011, *and* after the Agreement is executed, either through legislative enactment into law or legislatively enabled contract participation in the Agreement, by two (2) Participating States, provided …"

~~3.~~ Amendments to the Agreement may be proposed by any Participating State to the Association for enactment by the Participating States. No amendment shall become effective and binding upon the Association and the Participating States ~~unless and until all Participating States enact the amendment into law.~~

Drafting Note – AF: We suggest the use of a process for amendments similar to the one used to amend the Constitution. First the Executive Committee must pass it by 2/3 and then the Association voting Members must pass it by 3/4.

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Article IX Withdrawal, Default and Dissolution

1. Withdrawal
    a. Once effective, the Agreement shall continue in force and remain binding upon each ~~and every~~ Participating State; provided that a Participating State may withdraw from the Agreement ("Withdrawing State") by enacting a statute specifically repealing the statute that enacted or enabled participation in the Agreement into law.
    b. The effective date of withdrawal is the effective date of the repealing statute. However, the withdrawal shall not apply to any tax or compliance determinations approved on the date the repealing statute becomes effective, except by mutual agreement of the Association and the Withdrawing State unless the approval is rescinded by the Association.
    c. The Member of the Withdrawing State shall immediately notify the Executive Committee in writing upon the introduction of legislation repealing this Agreement in the Withdrawing State.
    d. The Association shall notify the other Participating States of the introduction of such legislation within ten (10) days after its receipt of notice thereof.
    e. *The Withdrawing State is responsible for all obligations, duties and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal.* (Part of this Section regarding Commissions decisions removed.)
    f. Reinstatement following withdrawal of any Participating State shall occur upon the effective date of the Withdrawing State reenacting the Agreement.
2. Default
    a. If the Association determines that any Participating State has at any time defaulted ("Defaulting State") in the performance of any of its obligations or responsibilities under this Agreement, the Bylaws or duly promulgated Rules, or has failed to adopt a mandatory Rule, then, after notice and hearing as set forth in the Bylaws, all rights, privileges and benefits conferred by this Agreement on the Defaulting State shall be suspended from the effective date of default as fixed by the Association. (Part of Section regarding grounds for default removed.) The Association shall immediately notify the Defaulting State in writing of the Defaulting State's suspension pending a cure of the default.

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b. The Association shall stipulate the conditions and the time period within which the Defaulting State must cure its default. If the Defaulting State fails to cure the default within the time period specified by the Association, the Defaulting State shall be terminated from the Agreement and all rights, privileges and benefits conferred by this Agreement shall be terminated from the effective date of termination.

c. Notwithstanding any provision herein, the Defaulting State is responsible for all obligations, duties and liabilities incurred through the effective date of termination, including any obligations, the performance of which extend beyond the effective date of termination, except to the extent those obligations may have been released or relinquished by mutual agreement of the Association and the Defaulting State.

d. Reinstatement following termination of any Participating State requires a reenactment of the Agreement.

3. Dissolution of Agreement

a. The Agreement dissolves effective upon the date of the withdrawal or default of the Participating State that reduces membership in the Agreement to one Participating State.

b. *Upon the dissolution of this Agreement, the Agreement becomes null and void and shall be of no further force or effect*, and the business and affairs of the Association shall be ~~wound up~~ concluded and any surplus funds shall be distributed in accordance with the Bylaws.

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Article X Severability and Construction

1. *The provisions of this Agreement shall be severable; and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of this Agreement shall be enforceable.*
2. *The provisions of this Agreement shall be liberally construed to effectuate its purposes.*
3. *Throughout this Agreement the use of the singular shall include the plural and vice-versa.*
4. *The headings and captions of articles, sections, sub-sections, paragraphs and sub-paragraphs used in this Agreement are for convenience only and shall be ignored in construing the substantive provisions of this Agreement.*

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Article XI Binding Effect of Agreement and Other Laws

1. *Each Participating State represents that it has the legal authority necessary to enter into this Agreement for the purposes stated in the Agreement, including the collection and allocation among the other Participating States of applicable Nonadmitted Insurance premium taxes and the use of the designated Clearinghouse for the facilitation of the payment and distribution of such premium taxes.*
2. *This Agreement may be executed in any number of counterparts, each of which will constitute an original and all of which taken together will constitute one and the same instrument. Counterparts may be executed either in original or faxed form and the Participating States shall accept any signatures received by a receiving fax machine as original signatures of the Participating State; provided, however, that a Participating State providing its signature in such manner will promptly forward to the other Participating States and the Clearinghouse a signed copy of this Agreement which was so faxed.*

Drafting Note – AF: Paragraph #2 needs to be fixed to include e-mail and electronic signatures as suggested by New York and others. And I suggest that #1 and #2 be moved up to Article X.

3. Binding Effect of this Agreement
    a. All official actions of the Association, including Rules duly promulgated by the Association and amendments made to this Agreement, are binding upon the Participating States.
    b. All agreements between the Association and the Participating States are binding in accordance with their terms.
    c. In the event any provision of this Agreement exceeds the constitutional limits imposed on the legislature of any Participating State, the obligations, duties, powers or jurisdiction sought to be conferred by that provision upon the Association shall be ineffective as to that Participating State, and those obligations, duties, powers or jurisdiction shall remain in the Participating State and shall be exercised by the agency thereof to which those obligations, duties, powers or jurisdiction are delegated by law in effect at the time this Agreement becomes effective.
4. Other Laws
    a. By entering into this Agreement, a Participating State is not deemed to surrender or abandon any of the powers, rights, privileges or authorities vested in it under its State Constitution, Statutes, Acts, or otherwise, or to impair any of such powers, rights, privileges or authorities.

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b. After execution of this Agreement, each Participating State will do, or cause to be done, all acts as the other Participating States may reasonably require from time to time for the purpose of giving effect to this Agreement and each Participating State will use reasonable efforts, and take all steps as may be reasonably within that Participating State's power, to implement to their full extent the provisions of this Agreement.

c. Decisions of the Association, and Rules promulgated by the Association, shall constitute the exclusive Rule, applicable to the Participating States, as set forth in the Bylaws. Any law or regulation regarding Nonadmitted Insurance of Multi-State Risks, or Nonadmitted Insurance of Single-State Risks to the extent the Participating State has agreed to utilize the Clearinghouse, that is contrary to Rules of the Association, is preempted with respect to the following:

- Clearinghouse Transaction Data reporting requirements;
- Implementation of Allocation Formulas for Nonadmitted Insurance of Multi-State Risks;
- Clearinghouse Transaction Data collection requirements;
- Premium Tax payment time frames and Rules concerning ~~dissemination~~ distribution of taxes and data among the Participating States for Nonadmitted Insurance of Multi-State Risks; and
- Rules and Uniform Standards for reporting to a Clearinghouse for receipt and distribution of Clearinghouse Transaction Data related to Nonadmitted Insurance of Multi-State Risks.

Drafting Note – AF: SLIMPACT-Lite includes stronger language stating that Rules preempt state laws and regulation not only those areas related to the Clearinghouse as stated above but also those regarding:

a. exclusive compliance with surplus lines law of the Home State of the insured; and

b. Uniform foreign Insurers Eligibility Requirements.

c. Uniform Policyholder Notice.

d. Uniform treatment of Purchasing Groups procuring Non-Admitted Insurance.

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ANNEX "A"

Nonadmitted Insurance Premium Tax Allocation

This Annex to the Agreement sets forth the provisions governing the method of tax Allocation for Multi-State Risks, as defined in Part II. If the allocation schedule does not identify a classification appropriate to the property or risk being insured, then the Surplus Lines Licensee, or an insured who independently procures insurance, consistently shall use an alternative method of equitable allocation across similar types of insurance policies and contracts, and shall maintain for at least five years, documented evidence of the bases and other criteria used by the Surplus Lines Licensee in order to substantiate the method.

SEE TABLE ON THE FOLLOWING PAGES

Drafting Note – AF: Too many states seemed to take exception to the Table as presented in 11/16/10 version of NIMA. I suggest that we use the information mentioned in an earlier call by NAPSLO regarding the gathering of allocation tables/methods from all the states and merge them together to come up with a consensus. As for classes or types of coverage not detailed on the final Allocation Table, each state should incorporate into its legislative changes a method to handle those circumstances, and if it comes down to it, the licensee will have to defer to the law of the Home State.

[INSERT TABLE PAGES]

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ANNEX "B"

Allocation Formulas

For the purposes of this Annex and subject to Parts III, IV, and VII, the Nonadmitted Insurance premium tax revenue for a calendar tax ~~entitlement~~ year or for a sub-period of a calendar tax ~~entitlement~~ year, as the case may be, is the amount determined by the formula:

Drafting Note – AF: The Tax Allocation formula below does not take into account Non-Participating States. The Home State Net Tax formula below simply did not make sense to me as it was written. New York's Tax Collection formula is more concise. This area needs more work.

~~Tax Allocation = (Net Tax Due to Each State/Net Tax Due to All States) x Amount Collected~~

~~Home State Net Taxes = (Taxes collected for the Home State + Taxes Due from Other Participating States + Taxes Due to Non) – Taxes Owed to Other Participating States~~

Home State Net Taxes = (Taxes collected on premium allocated to Home State + Taxes collected on premium allocated to other Participating States + Taxes collected on premium allocated to Non-Participating States) – Taxes Owed to Other Participating States

~~Total Premium Tax Owed on Multi-State Policies = (Home State's Tax Rate x Premium Allocated to Home State) + (Home State's Tax Rate x Premium Allocated to Non-Participating States) + (Participating States' Tax Rate x Premium Allocated to each Participating State)~~

OR

Total Premium Tax to Be Collected on Each Multi-State Policy

Each Surplus Lines licensee or insured who independently procures insurance shall collect and submit to the Clearinghouse premium tax based on the following formula:

a = Home State's tax rate
b = Portion of premium ~~attributable~~ allocated to the Home State
c = Portion of premium ~~attributable~~ allocated to non-Participating State if insurer is nonadmitted in that State
d = Participating State's tax rate

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e = Portion of premium ~~attributable~~ allocated to Participating State if insurer is nonadmitted in that state

(a * b) + (a * c) + (d * e) = Total premium tax to be collected